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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE 81 OF
THE RULES OF THE SUPREME
COURT OF ARIZONA

Supreme Court No. R-__-____

**Petition to Amend Rule 81, Canon
2, Rule 2.3(C) of the Rules of the
Supreme Court of Arizona**

Pursuant to Rule 28 of the Supreme Court, Mike Palmer petitions this Court to amend Rule 81 of the Rules of the Supreme Court of Arizona.¹

I file this petition in light of this Court's recent ruling in *Brush & Nib Studio, LC v. City of Phoenix*. That ruling affirmed our broad constitutional rights to Free Speech, affirming that the "government 'must not be allowed to force persons to express a message contrary to their deepest conviction.'"

In light of this affirmation, I petition this Court to amend Canon 2, Rule 2.3(C) so that judges cannot force lawyers/litigants of faith to express messages

¹ Although I am Head of the Coalition to Stop Abuse of Civil Harassment Law—a loose collection of Arizona residents who have been abused by civil Injunction law—I file this petition on my own behalf. While the members of Coalition agree that this petition is needed, not all of them can, in good faith, be part of this petition, because not all of them have sincere religious convictions.

contrary to their convictions. Specifically, I am asking this Court to prevent its judges (i.e., the State) from requiring people of faith to address certain people with State mandated (i.e., "politically correct") titles or pronouns under threat of substantial harm.

I. Background

This matter arises from a real world case.

Recently I helped a buddy/defendant write a (successful) appeal against a (bogus) civil Injunction Against Harassment.

Tangential to the matter was the plaintiff's spouse (testifying as a witness), who chooses to dress like a woman and who, at the time, was a Councilman in Quartzsite.

In court the plaintiff referred to her spouse as a woman. As did the hearing judge.

However we (my buddy and I), because of our sincerely held convictions, could not, in good faith, refer to the transvestite as "Councilwoman." For as with the litigants in *Brush & Nib*, we hold the traditional belief that we were created male and female. (*B&N*, ¶ 15.) And so we chose to not waive our First Amendment right in my buddy's filings for appeal by addressing the transvestite as a woman. Instead we addressed the transvestite as "Councilman," per the man's God-given sex.

(It should go without saying that we were not "manifesting bias or prejudice, or engaging in harassment." (See below for the quote.) We were simply speaking

the truth and didn't want to violate our religious beliefs. (See *B&N*, ¶¶ 49, 50.))

II. Purpose

Currently Rule 81, at sub-Rule 2.3(C) says, "A judge shall *require* lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others." Since my buddy was acting pro se – as his own lawyer – this rule would apply to him too.

Fortunately for us, this matter did not come to a head at the appeal level, since there was no open court. Although the Plaintiff did object in her Answering Brief, and pointedly referred to her husband as a Councilwoman.

But given Rule 81, had my buddy had to appear in open court, then this matter could have come to a head. And with the strong requirement in the Rule that a judge "shall require," the judge could have forced my pro se buddy "to utter what is not in his mind," or to make a choice between "either abandoning [his] religious principle or facing [contempt] prosecution." (*B & N*, ¶¶ 149,132.)

Either my buddy would have been compelled to address the Councilman as "Councilwoman" and "she/her" or risk being held in contempt of court. And since contempt of court is a threat of loss of liberty or financial penalty from the government, it constitutes a substantial burden. (*B & N*, ¶¶132-134.)

So, as it stands now, Rule 81 meets both the "compelled speech" and

"substantial burden" prongs that this Court cited in *Brush & Nib* that make it a violation of our Free Speech protections.²

In *Brush & Nib* this Court acted to protect the free speech rights of business owners in Arizona. I ask this Court act similarly to protect the free speech rights of litigants in the courts of Arizona.

III. Contents of the Proposed Rule Amendment

In *Brush & Nib*, this Court said that there were two violations that caused a First Amendment issue: compelled speech and substantial burden.

As to the first, since compelled speech is anathema to free speech, the best and easiest way to amend Rule 2.3(c) to preserve the free speech rights of Arizonans in the courts is to change the phrase "A judge shall ~~require~~ lawyers in proceedings before the court to refrain from manifesting bias or prejudice ... " to "A judge shall request lawyers in proceedings ..."

Alternatively, the Court could eliminate the substantial burden caused by refusing to speak when compelled by a judge by adding language to Rule 2.3(c) that "No lawyer or litigant shall be held in contempt of court or otherwise punished for not complying with a judge's requirement if the lawyer or litigant informs the court that being required to use certain titles or pronouns to address other parties violates

² Even if the judge had told my buddy to address the transvestite as "councilperson," my buddy inevitably would have fallen back to traditional norms while speaking and occasionally referred to the transvestite as a he/him, bringing on the court's wrath.

the lawyer's or litigant's sincere religious beliefs."

To the best of my knowledge, no one has filed a similar petition within the past five years.

SUBMITTED this 10th day of January 2020.

By /s/ Mike Palmer